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Siddharth Hariharan

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SIDDHARTH HARIHARAN, individually and on behalf of all others similarly situated.

Case No. C 11-2509 SBA

**SECOND NOTICE OF PENDENCY OF
OTHER ACTIONS OR PROCEEDINGS**

14 Plaintiff.

15

10 ADOBE SYSTEMS INC., APPLE INC.,
11 GOOGLE INC., INTEL CORP., INTUIT
12 INC., LUCASFILM LTD., PIXAR, and
13 DOES 1-200.

19 Defendants.

Pursuant to Local Rule 3-13, Plaintiff Siddharth Hariharan (“Plaintiff”) submits this
Second Notice of Pendency of Other Actions or Proceedings.

On June 30, 2011, a case captioned *Mark Fichtner v. Adobe Systems Inc., Apple Inc., Google Inc., Intel Corp., Intuit Inc., Lucasfilm Ltd., Pixar, and Does 1-200*, Case No. 111-cv-204187 (Santa Clara Superior Court) (“*Fichtner*”) was filed in Santa Clara County Superior Court concerning the same subject matter and parties as this action.

In addition, pursuant to Local Rule 3-13(b)(C) and 3-13(d), to facilitate coordination with

1 the Santa Clara Superior Court, Plaintiff respectfully suggests that the Court should transfer this
 2 action to the San Jose Division of the U.S. District Court for the Northern District of California.
 3 Transfer to the San Jose Division would also be convenient for the parties and in the interests of
 4 justice, because the San Jose Division serves Santa Clara County, the county in which the
 5 majority of the witnesses and defendants are located, and the county in which the defendants who
 6 employed over 98% of proposed class members maintain their principal places of business. *Cf.*
 7 L.R. 3-2(h) (intradistrict transfer may be ordered to serve the “convenience of parties and
 8 witnesses and the interests of justice”).

9 **I. Description of the Additional Action**

10 The additional case, like this action and the two other cases described in Plaintiff’s First
 11 Notice of Pendency of Other Actions or Proceedings (“First Notice”) (Dkt. No. 32), alleges a
 12 conspiracy among Adobe Systems Inc., Apple Inc., Google Inc., Intel Corp., Intuit Inc.,
 13 Lucasfilm Ltd., Pixar, and Does 1-200 (“Defendants”), to fix and suppress the compensation of
 14 their employees through an illegal agreement not to recruit each others’ employees in violation of
 15 the California antitrust law, Bus. & Prof. Code sec. 16720, *et seq.*, and the California Unfair
 16 Competition Law, Bus. & Prof. Code sec. 17200, *et seq.* The plaintiff in the additional case also
 17 alleges that this agreement deprived those employees of higher wages and other benefits that
 18 would have accrued to them in a freely functioning market, absent Defendants’ agreement. (*See*
 19 attached Declaration of Dean M. Harvey in Support of the Second Notice of Pendency of Other
 20 Actions or Proceedings (“Harvey Decl.”) ¶ 2, Ex. A (“*Fichtner Compl.*”)).

21 **II. Title and Location of the Court in Which The Other Action is Pending**

22 The new case was filed in Santa Clara County Superior Court on June 30, 2011. The
 23 caption is: *Mark Fichtner v. Adobe Systems Inc., Apple Inc., Google Inc., Intel Corp., Intuit Inc.,*
Lucasfilm Ltd., Pixar, and Does 1-200, Case No. 111-cv-204187 (Santa Clara Superior Court).

24 **III. The Relationship of the Other Case To The Pending Action**

25 The undersigned attorneys represent Plaintiff in this action, the plaintiff in the *Fichtner*
 26 case, and the two additional cases described in the First Notice (collectively, “Plaintiffs”).¹ All

27 ¹ The two additional cases are: *Michael Devine v. Adobe Systems Inc., Apple Inc., Google Inc.,*

1 four cases concern the same subject matter, parties, and claims for relief.

2 Plaintiffs allege, *inter alia*, that Defendants' conspiracy in restraint of trade included "(1)
3 agreements not to actively recruit each other's employees; (2) agreements to provide notification
4 when making an offer to another's employee (without the knowledge or consent of that
5 employee); and (3) agreements that, when offering a position to another company's employee,
6 neither company would counteroffer above the initial offer." (*Hariharan* Compl. ¶ 1; *Devine*
7 Compl. ¶ 1; *Marshall* Compl. ¶ 1; *Fichtner* Compl. ¶ 1.)

8 In each of the four cases an individual plaintiff seeks to represent an identically defined
9 class:

10 All natural persons employed by Defendants in the United States on
11 a salaried basis during the period from January 1, 2005 through
12 January 1, 2010 (the 'Class Period'). Excluded from the class are:
13 retail employees; corporate officers, members of the boards of
directors, and senior executives of Defendants who entered into the
illicit agreements alleged herein; and any and all judges and
justices, and chambers' staff, assigned to hear or adjudicate any
aspect of this litigation.

14 (*Hariharan* Compl. ¶ 30; *Devine* Compl. ¶ 31; *Marshall* Compl. ¶ 31; *Fichtner* Compl. ¶ 31.)

15 Plaintiffs allege the same claims for relief: violations of California's antitrust statute,
16 Business and Professions Code sections 16720, *et seq.*; Business and Professions Code section
17 16600; and California's Unfair Competition Law, Business and Professions Code sections 17200,
18 *et seq.* (*Hariharan* Compl. ¶¶ 95-120; *Devine* Compl. ¶¶ 108-133; *Marshall* Compl. ¶¶ 108-133;
19 *Fichtner* Compl. ¶¶ 108-133.)

20 **IV. The Proceedings Should be Coordinated and This Case Should Be Transferred to the**
San Jose Division

21 As described above, the four actions concern exactly the same subject matter and should
22 be coordinated pursuant to Local Rule 3-13(b)(C). Coordination of discovery, motion practice,
23 and trial will "avoid conflicts, conserve resources and promote an efficient determination of the
24 action." *Id.*

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26
27 *Intel Corp., Intuit Inc., Lucasfilm Ltd., Pixar, and Does 1-200*, Case No. 111-cv-204053 (Santa
Clara Superior Court); and *Brandon Marshall v. Adobe Systems Inc., Apple Inc., Google Inc.,*
28 *Intel Corp., Intuit Inc., Lucasfilm Ltd., Pixar, and Does 1-200*, Case No. 111-cv-204052 (Santa
Clara Superior Court).

1 Plaintiffs respectfully suggest that the first step in coordination should be transfer of this
 2 action (*Hariharan*) to a District Judge sitting in the San Jose Division. It will be easier for a
 3 District Judge located mere minutes from the pending California actions to conduct coordinated
 4 proceedings with his or her California counterpart. Additionally, coordination in San Jose would
 5 be most efficient for the parties. The *Fichtner* case, like the *Devine* and *Marshall* cases, were
 6 filed in Santa Clara County Superior Court because, unlike the *Hariharan* case, the plaintiff in the
 7 *Fichtner* case was formerly employed exclusively by a defendant headquartered in Santa Clara
 8 County (Intel). (*Fichtner* Compl. ¶ 21. See also *Devine* Compl. ¶ 21; *Marshall* Compl. ¶ 21.) Of
 9 the seven Defendants, five—Adobe, Apple, Google, Intel and Intuit—maintain their principal
 10 places of business in Santa Clara County. By Defendants' own estimates, these five defendants
 11 employed at least 98% of class members,² and employed 3 out of the 4 individual plaintiffs.³
 12 These five defendants negotiated, finalized, implemented, and enforced explicit agreements to
 13 eliminate competition among each other, all within Santa Clara County. (*Fichtner* Compl. ¶¶ 61-
 14 96; *Devine* Compl. ¶¶ 61-96; *Marshall* Compl. ¶¶ 61-96.) Thus, the vast majority of the
 15 percipient witnesses, relevant documents, and defendants are located in Santa Clara County.
 16 Accordingly, coordination in the San Jose Division will best “conserve resources” and “promote
 17 an efficient determination of the action.”

18 For the same reasons, transfer to the San Jose Division would also be consistent with
 19 Local Rule 3-2(h) (intradistrict transfer may be ordered to serve the “convenience of parties and
 20 witnesses and the interests of justice”). This Court has granted motions for intradistrict transfer
 21 under similar circumstances. See, e.g., *Rivera v. Hewlett Packard Corp.*, Case No. 03-0939, 2003

22
 23 ² In Defendants' notice of removal and supporting papers, Defendants use current employees as a
 24 surrogate for employees who worked from January 1, 2005 through January 1, 2010 (the class
 25 period). (See Notice of Removal ¶ 21, at p. 6, Dkt. No. 1.) Defendants estimate that they
 26 currently employ 83,300 individuals who would otherwise qualify as members of the class. (*Id.*)
 27 Of these, Defendants estimate that 82,283 work for defendants who maintain their principal
 28 places of business in Santa Clara County: Adobe Systems Inc., Apple Inc., Google Inc., Intel
 Corp., and Intuit Inc. (Declarations of Rhonda Hjort ¶ 3, Dkt. No. 4; Jack Gilmore ¶ 3, Dkt. No.
 5; Joel Podolny ¶ 3, Dkt. No. 6; Tadhg Bourke ¶ 3, Dkt. No. 7; James M. Kennedy ¶ 3, Dkt. No.
 8; Debbie R. Oldham-Auker ¶ 2, Dkt. No. 9; and Kumud Kokal ¶ 3, Dkt. No. 31-1.)

³ The remaining two defendants, Lucasfilm Ltd. and Pixar, employed less than 2% of class
 members. Lucasfilm Ltd. maintains its principal place of business in San Francisco County, and
 Pixar maintains its principal place of business in Alameda County.

1 WL 24029472, at *1-*2 (N.D. Cal. Apr. 22, 2003) (Armstrong, J.) (granting Hewlett Packard's
 2 motion for transfer to the San Jose Division in an unlawful termination case, because Hewlett
 3 Packard maintained its principal place of business in Santa Clara County). In a case regarding
 4 alleged defects in the iPad, Apple Inc. ("Apple") filed a motion for intradistrict transfer to the San
 5 Jose Division because Apple maintained its principal place of business in Santa Clara County,
 6 despite the fact that the alleged defects manifested themselves in Contra Costa County, and one of
 7 the named plaintiffs resided in Contra Costa County. *Baltazar v. Apple Inc.*, Case No. 10-3231,
 8 2010 WL 4392740, at *1 (N.D. Cal. Oct. 29, 2010) (White, J.) Apple argued that the case should
 9 be transferred to the San Jose Division because "the design and development of the iPad occurred
 10 in Santa Clara County" and "the advertising and marketing plans were developed there as well."
 11 *Id.*, at *2. The Court concluded that the case arose in Santa Clara County and granted Apple's
 12 motion to transfer. *Id.*

13 Coordination in San Jose also makes sense in the likely event that Defendants attempt to
 14 remove the *Fichtner*, *Devine*, and *Marshall* actions. Those cases would be properly assigned
 15 upon removal to the San Jose Division. To avoid conflicts, one District Judge should decide
 16 Plaintiffs' forthcoming remand motion (or motions) and, should remand be denied in whole or in
 17 part, one District Judge should preside over all four actions in order to consistently decide major
 18 motions such as Plaintiffs' motion for class certification. Indeed, if all four cases are in District
 19 Court, Plaintiffs expect them to be substantially coordinated. *See* 28 U.S.C. § 1404(b). Similarly,
 20 if Plaintiffs' remand motion is granted, Plaintiffs will seek to coordinate the cases pursuant to
 21 California Code of Civil Procedure section 404.

22 **V. Plaintiffs Are Meeting and Conferring With Defendants Regarding Coordination Of**
The Proceedings

23 Plaintiffs have provided courtesy copies of the *Fichtner* complaint to Defendants' counsel
 24 and have asked Defendants' counsel to accept service on behalf of their clients. Plaintiffs have
 25 asked Defendants' counsel to meet and confer regarding coordination of all four cases, and will
 26 continue to do so in good faith and on an expedited basis. Local Rule 3-13(a), however, required
 27 Plaintiffs to file this Notice of Pendency of Other Action or Proceeding notwithstanding that the
 28

1 conference process on coordination is not complete. Should the conference process not produce
2 an agreement on coordination, Local Rule 3-13(c) permits a response to this notice to be filed by
3 any party within 14 days from the date of service of this notice.

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5 Dated: June 30, 2011 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

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By: /s/ Dean M. Harvey
8 Dean M. Harvey

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